

Uniplan Corporation, Inc. and Bay Area Typographical Union, Local 21. Case 20-CA-16933

July 28, 1982

DECISION AND ORDER

**BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN**

Upon a charge filed on March 1, 1982, by Bay Area Typographical Union, Local 21, herein called the Union, and duly served on Uniplan Corporation, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 20, issued a complaint on March 19, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on February 2, 1982, following a Board election in Case 20-RC-15312, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about February 23, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 29, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 5, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on April 8, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

tional Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admitted that it had refused to bargain with the Union, but denied that it had committed any violation of Section 8(a)(5) and (1) of the Act by doing so. Respondent alleges as affirmative defenses that the Union is not the properly certified representative of any of its employees; that the Board erred in overruling Respondent's objections to the election in the underlying representation case; and that the Board erred in denying Respondent a hearing on its objections in the underlying representation case. In its response to the Notice To Show Cause, Respondent more particularly argues that the presence of the Union's representative in the polling vicinity allegedly for a substantial period of time during the election raises serious questions regarding the propriety of the election and that these questions warrant a hearing.

Our review of the record herein, including the record in Case 20-RC-15312, reveals that, on May 19, 1981, the Acting Regional Director for Region 20 approved a Stipulation for Certification Upon Consent Election entered into by the Respondent and the Union concerning the unit involved in this proceeding. Thereafter, on June 19, 1981, an election was conducted under the direction and supervision of the Acting Regional Director for Region 20 among the employees in the unit found appropriate. The tally of ballots indicates that of approximately 36 eligible voters, 20 cast ballots for, and 15 cast ballots against, the Union. There was one challenged ballot, which was insufficient in number to affect the results of the election.

Thereafter, on June 26, 1981, Respondent filed objections to the election in which it contended, *inter alia*, that the Union had interfered with the election by the conduct of its representative who allegedly visited and positioned herself in the polling area while the balloting was taking place. On July 17, 1981, the Acting Regional Director for Region 20 issued his report on objections in which he concluded that the Union had not engaged in objectionable conduct. *Inter alia*, he found that at the time the Union's representative was in the polling area all eligible employees had voted so that the representative's presence could not have interfered with the election. On August 7, 1981, Respondent filed exceptions to the Acting Regional Director's report in which it contended that a hearing was necessary to determine whether the union

¹ Official notice is taken of the record in the representation proceeding, Case 20-RC-15312, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

representative had "engaged in electioneering or other misconduct with eligible employees prior to their voting, and prior to her actually entering the polling place." In this regard, Respondent claimed that it had presented *prima facie* evidence of substantial and material factual issues which warranted setting aside the election, or the directing of a hearing. On February 2, 1982, the Board issued a Decision and Certification of Representative,² adopting the Acting Regional Director's findings and recommendations and certifying the Union as the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

It is clear from the foregoing that all issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a California corporation with its office and principal place of business located in Brisbane, California, where it is engaged in electronic data base publishing. In the 12-month period ending December 31, 1980, Respondent in the course and conduct of its business operations sold and shipped from the Brisbane, California, facility goods and services valued in excess of \$50,000 directly to customers located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II THE LABOR ORGANIZATION INVOLVED

Bay Area Typographical Union, Local 21, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production employees in the data layout department, data input department, data proofing department, art department employees, special accounts department, support department and production control department of the Employer at its 123 South Hill Drive, Brisbane, California, location; excluding maintenance and janitorial employees, office clerical employees, professional employees, sales employees, guards and supervisors as defined in the Act.

2. The certification

On June 19, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 20, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on February 2, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about February 5, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about February 23, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since February 23, 1982, and at all times thereafter, refused to bargain collectively with the Union as the

² Not reported in volumes of Board Decisions.

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Uniplan Corporation, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Bay Area Typographical Union, Local 21, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production employees in the data layout department, data input department, data proofing department, art department employees, special accounts department, support department and production control department of the Employer at its 123 South Hill Drive, Brisbane, California, loca-

tion; excluding maintenance and janitorial employees, office clerical employees, professional employees, sales employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 2, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about February 23, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Uniplan Corporation, Inc., Brisbane, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Bay Area Typographical Union, Local 21, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production employees in the data layout department, data input department, data proofing department, art department employees, special accounts department, support department and production control department of the Employer at its 123 South Hill Drive, Brisbane, California, location; excluding maintenance and janitorial employees, office clerical employees, professional employees, sales employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facility in Brisbane, California, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Bay Area Typographical Union, Local 21, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production employees in the data layout department data input department, data proofing department, art department employees, special accounts department, support department and production control department of the Employer at its 123 South Hill Drive, Brisbane, California, location; excluding maintenance and janitorial employees, office clerical employees, professional employees, sales employees, guards and supervisors as defined in the Act.

UNIPLAN CORPORATION, INC.